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Attorney for Defendants
QUALITY MERCHANT SERVICES, INC. AND
MICHAEL ALIMENTO

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – OAKLAND DIVISION

DR. TIMOTHY COLLINS and SIDNEY
NAIMAN, individually and on behalf of all
others similarly situated,

Plaintiffs,

v.

TOTAL MERCHANT SERVICES, INC.,
QUALITY MERCHANT SERVICES, INC.,
MICHAEL ALIMENTO and BOBBY
POWERS,

Defendants.

CASE NO. 4:17-cv-03806-CW

**DEFENDANT'S SUPPLEMENTAL
RESPONSES TO PLAINTIFF'S
INTERROGATORIES**

The Honorable Claudia Wilken

Action Filed: 7/5/17
Trial Date: Unassigned

**DEFENDANT'S OBJECTIONS AND SUPPLEMENTAL ANSWERS TO
PLAINTIFF'S INTERROGATORIES**

Pursuant to Federal Rule of Civil Procedure 34, Defendant Michael Alimento ("Defendant" or "Alimento"), by and through its attorneys, Gordon & Rees, LLP, hereby objects and responds to Plaintiff's Interrogatories as follows:

INTERROGATORY NO. 9: IDENTIFY all individuals and third parties with knowledge of QUALITY MERCHANT using pre-recorded messages to promote goods or services, as well as the substance of that knowledge.

RESPONSE TO INTERROGATORY NO. 9: Defendant objects to this Interrogatory to the extent it seeks information that is confidential and/or proprietary, or otherwise constitutes a trade secret. Defendant additionally objects to the instant interrogatory to the extent that it calls for the identification of information protected by the attorney-client privilege and/or attorney work product doctrine.

Subject to and without waiving the foregoing Objections, answering upon information and belief, Brian Alimento and Michael Alimento (QMS Vice-President) have knowledge of QMS's telemarketing practices. Answering further upon information and belief, subject to and without waiving those objections, Darren Wise, Hawkins Siemon, Yesenia Monroe, Andy Varble, and Laura Edgar are TMS employees that would have knowledge of QMS' use of a dialer system since at least October of 2014 with no employee of TMS ever voicing an objection to QMS' use of such a dialer system. Answering further upon information and belief, subject to and without waiving those objections, it is possible that certain persons at Spitfire and Winleads may have information responsive to this request.

INTERROGATORY NO. 10: For any telephone or call detail records produced in response to any of the PLAINTIFFS' interrogatories or document requests, provide:

- a. Identifying information for the person you were trying to reach (e.g., name, business name, address, email, fax number, all phone numbers);
- b. The source(s) where you obtained the telephone number called, including the nature of such relationship and the facts and circumstances surrounding such; and
- c. Identification of the equipment, third party, and/or software used to make the call (e.g., Avatar, ytel, Five9, Guaranteed Contacts, Aspect, Avaya), and the location of the call origination/dialer.

1 **RESPONSE TO INTERROGATORY NO. 10:** Defendant objects to this Interrogatory to
 2 the extent it seeks information that is confidential and/or proprietary, or otherwise constitutes a
 3 trade secret.

4 Subject to and without waiving the foregoing Objections, with respect to subparagraph
 5 (a), pursuant to Fed. R. Civ. P. 33, please see the documents produced herewith, which are
 6 records of a combination of pre-recorded message calls along with computer-assisted dialing
 7 that would connect to a live operator; with respect to subparagraph (b), those telephone
 8 numbers were all sales leads purchased from Salesgenie.com for the potential use and on
 9 behalf of Total Merchant Services, Inc.; with respect to subparagraph (c), in the event that
 10 those telephone numbers were not manually or physically dialed, QMS used Winleads or
 11 Spitfire equipment. Investigation continues.

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 14 Dated: May 16, 2018

GORDON REES SCULLY MANSUKHANI,
 LLP

By: /s/ Kevin Liu
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 QUALITY MERCHANT
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 MICHAEL ALIMENTO

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VERIFICATION

Michael Alimento, being duly sworn, deposes and states that he is the Vice President of QMS, that he signs the foregoing Objections and Supplemental Answers to Plaintiff's Interrogatories and is duly authorized to do so, that he has read the foregoing Interrogatories and responses thereto and knows the contents thereof, and that certain of the matters stated in such responses are not within his personal knowledge. These responses were prepared with the assistance of employees and counsel for QMS, upon whom he has relied. The responses are subject to inadvertent and undiscovered error and are based upon and necessarily limited by the records and information still in existence, presently recollected and thus far discovered in the course of preparation of such responses. The affiant further states that Michael Alimento and QMS reserve the right to make any changes in the responses if it appears at any time that omissions or errors have been made therein or that more accurate information is available, and that subject to the limitations set forth herein, such responses are true to the best of his knowledge, information and belief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 10th, 2018 in Illinois.


Michael Alimento

Gordon Rees Scully Mansukhani, LLP
275 Battery Street, Suite 2000
San Francisco, CA 94111

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CERTIFICATE OF SERVICE

I, the undersigned, am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Gordon Rees Scully Mansukhani, LLP, 275 Battery Street, Suite 2000, San Francisco, CA 94111. On the date below, I served the within document:

DEFENDANTS QUALITY MERCHANT SERVICES, INC. AND MICHAEL ALIMENTO'S SUPPLEMENTAL RESPONSES TO PLAINTIFF'S INTERROGATORIES


- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☐ by personally arranging the hand-delivery of the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in United States mail in the State of California at San Francisco, addressed as set forth below.
- ☐ by placing a true copy thereof enclosed in a sealed envelope, at a station designated for collection and processing of envelopes and packages for overnight delivery by FedEx as part of the ordinary business practices of Gordon & Rees described below, addressed as follows:
- ☒ by **Electronic Transmission** based on a court order or an agreement of the parties to accept service by email or electronic transmission. I am readily familiar with Gordon & Rees's practices for transmitting documents by electronic mail via internet service provider. I caused the documents to be sent to the persons at the email addresses listed for each addressee on the following service list. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
- ☐ by transmitting via ELECTRONIC FILING within the ECF System for the USDC – Northern District of California, the document(s) listed above on this date before 5:00 p.m.

SEE ATTACHED SERVICE LIST

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California and the United States of America that I am employed in the office of a member of the Bar of this Court at whose direction this service was made and that the above is true and correct.

Executed on May 17, 2018, at San Francisco, California.



Kibibi N. Shaw

SERVICE LIST

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